

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 15, 2009

SENATE BILL

No. 442

Introduced by Senator Ducheny

(Coauthor: Senator Wiggins)

(Coauthors: Assembly Members Block, Chesbro, and Monning)

February 26, 2009

An act to amend Sections 1200, 1213, 1214, 1219, 1229, and 1266 of, and to add Section 1212.5 to, the Health and Safety Code, relating to clinics.

LEGISLATIVE COUNSEL'S DIGEST

SB 442, as amended, Ducheny. Clinic corporation: licensing.

Under existing law, the State Department of Public Health is responsible for the licensing and regulation of clinics, as defined. A violation of these provisions is a crime.

This bill would define "clinic corporation" as a nonprofit organization that owns one or more primary care clinics, *or mobile health care units* as defined, and would provide for a single, consolidated license for corporation clinics, as specified.

Existing law provides for a fee to be paid for an initial license, renewal license, license upon change of ownership, or special permit set at specified amounts.

This bill would require the department to annually set the fee for a clinic corporation. The bill would also make conforming changes to the licensing provisions. Because this bill would create a new crime, it imposes a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1200 of the Health and Safety Code is
2 amended to read:

3 1200. (a) As used in this chapter, “clinic” means an organized
4 outpatient health facility that provides direct medical, surgical,
5 dental, optometric, or podiatric advice, services, or treatment to
6 patients who remain less than 24 hours, and that may also provide
7 diagnostic or therapeutic services to patients in the home as an
8 incident to care provided at the clinic facility. Nothing in this
9 section shall be construed to prohibit the provision of nursing
10 services in a clinic licensed pursuant to this chapter. In no case
11 shall a clinic be deemed to be a health facility subject to the
12 provisions of Chapter 2 (commencing with Section 1250). A place,
13 establishment, or institution that solely provides advice, counseling,
14 information, or referrals on the maintenance of health or on the
15 means and measures to prevent or avoid sickness, disease, or injury,
16 where that advice, counseling, information, or referral does not
17 constitute the practice of medicine, surgery, dentistry, optometry,
18 or podiatry, shall not be deemed a clinic for purposes of this
19 chapter.

20 (b) For purposes of this chapter:

21 (1) “Primary care clinics” means all the types of clinics specified
22 in subdivision (a) of Section 1204, including community clinics
23 and free clinics.

24 (2) “Specialty clinics” means all the types of clinics specified
25 in subdivision (b) of Section 1204, including surgical clinics,
26 chronic dialysis clinics, and rehabilitation clinics.

27 (3) “Clinic corporation” means a nonprofit organization that
28 operates one or more primary care clinics, as defined in ~~paragraphs~~
29 ~~(1) and (2)~~ *paragraph (1)* of subdivision (a) of Section 1204, that
30 are required to be licensed under Section 1205, ~~that may include~~

one or more mobile health care units required to be licensed or approved pursuant to the Mobile Health Care Services Act (Chapter 9 (commencing with Section 1765.101)) and operated as primary care clinics, or one or more primary care clinics and one or more mobile health care units.

(4) “Department” means the Licensing and Certification Division of the State Department of Public Health, or its successor.

SEC. 2. Section 1212.5 is added to the Health and Safety Code, to read:

1212.5. (a) Upon application of a clinic corporation that operates more than one primary care clinic, as defined in ~~paragraphs (1) and (2)~~ *paragraph (1)* of subdivision (a) of Section ~~1240 1204~~, the department shall issue a single consolidated license to the clinic corporation if the clinics included in the single consolidated license application meet the requirements of Section 1212 and other applicable requirements for licensure.

(b) In addition to primary care clinics, as described in subdivision (a), a clinic corporation may include, in its application for a single consolidated license, one or more mobile health care units that meet the requirements under the Mobile Health Care Services Act (Chapter 9 (commencing with Section 1765.101)).

(c) Upon application of a clinic corporation that operates more than one mobile health care unit and only operates mobile health care units, the department shall issue a single consolidated license to the clinic corporation if the mobile health care units included in the single consolidated license application meet the requirements under the Mobile Health Care Services Act (Chapter 9 (commencing with Section 1765.101)).

(d) Eligibility for a single consolidated license shall be based on the following criteria:

(1) The clinic corporation applying for the consolidated license is required to have held a valid, unrevoked, and unsuspended license for, at a minimum, the immediately preceding five years, with no demonstrated history of repeated or uncorrected violations of this chapter, or any regulation adopted pursuant to this chapter, that pose immediate jeopardy to a patient, as defined in subdivision (d) of Section 1218.1, and have no pending action to suspend or revoke its license.

(+)

(2) A completed application for a single consolidated license has been submitted and the associated license fee has been paid.

~~(2)~~

(3) The corporate officers, as specified in Section 5213 of the Corporations Code, are the same for each primary care clinic or mobile unit included in the single consolidated license.

~~(3)~~

(4) The clinic corporation's nonprofit board of directors both owns and operates each primary care clinic or mobile unit included in the single consolidated license.

~~(4)~~

(5) The clinic corporation has submitted evidence to the department establishing compliance with the minimum construction standards of adequacy and safety for physical plant, pursuant to subdivision (b) of Section ~~1126~~ 1226, for each primary care clinic included in the single consolidated license.

~~(5)~~

(6) There are one or more medical directors operating under a single set of policies, procedures, and standards for all the primary care clinics *and mobile health care units* maintained and operated by the licensee.

(e) A single consolidated license issued by the department shall specify the name, location, hours of operation, and services of each clinic included in the license.

~~(e)~~

(f) For purposes of this section there is a presumption that all primary care clinics included in the application for the single consolidated license that are separately licensed and in good standing at the time of application for a single consolidated license, meet the requirements of subdivision (a) and paragraph ~~(4)~~ (5) of subdivision (d).

~~(f)~~

(g) For purposes of this section there is a presumption that all mobile units included in the application for the single consolidated license that are separately licensed or approved by the department and in good standing at the time of application for a single consolidated license, meet the requirements of subdivision (b).

~~(g)~~

(h) The department shall issue a single consolidated license under this section within 30 days of receipt of a completed

1 application or within seven days of the date the central application
2 unit approves the application for a single consolidated license,
3 whichever is sooner. If the department determines that an applicant
4 does not meet the criteria for a single consolidated license as set
5 forth in subdivision (d), it shall identify, in writing and with
6 particularity, the grounds for that determination and shall, instead,
7 process the application under this chapter as if the application was
8 submitted on the date the denial ~~was released of the consolidated~~
9 *license was issued.*

10 ~~(h)~~

11 (i) Upon application to the department, a clinic corporation that
12 is issued a single consolidated license pursuant to this section may
13 add a clinic, including a mobile health care unit, to the single
14 consolidated license, or remove a clinic, including a mobile health
15 care unit, from the single consolidated license, at any time during
16 the license period. For every primary care clinic or mobile health
17 care unit added to the single consolidated license before the next
18 renewal date, the clinic corporation shall pay a license fee, if
19 applicable, equivalent to the fee for one primary care clinic
20 included in a single consolidated license set pursuant to subdivision
21 (d) of Section 1266, prorated based on the effective date of the
22 addition of the clinic.

23 ~~(i)~~

24 (j) The department shall develop a single-page application form
25 for adding *or removing* a clinic between renewal periods that
26 includes all of the following information:

27 (1) The name and address of the clinic corporation.

28 (2) The name and address of the clinic or mobile health unit to
29 be added or removed.

30 (3) The days and hours of operation and the services provided
31 at each clinic site added.

32 (4) A self-attestation that each clinic site added meets the
33 requirements of Section 1212, including minimum construction
34 standards for adequacy and safety of physical plant, pursuant to
35 subdivision (b) of Section 1226.

36 (5) Evidence of appropriate and sufficient fire clearance.

37 ~~(j)~~

38 (k) A clinic corporation that is issued a single consolidated
39 license may consolidate the administrative functions, as specified

1 in Section 1218.2, for all clinics that are subject to the single
2 consolidated license.

3 ~~(k)~~

4 (l) Upon written notice to the department, a clinic corporation
5 that has been issued a single consolidated license may apply for
6 one or more special permits pursuant to Section 1202. A clinic
7 corporation that is issued one or more special permits may transfer,
8 *with approval from the department*, the special permits from one
9 clinic site to another site that is included in the single consolidated
10 license.

11 ~~(t)~~

12 (m) The department shall transmit to the clinic corporation that
13 is issued a single consolidated license a renewal fee invoice at least
14 45 days prior to the expiration date of the single consolidated
15 license. Failure by the clinic corporation to make timely payment
16 of the renewal fee shall result in the expiration of ~~any licenses its~~
17 *consolidated license* and special permits. Timely application for
18 renewal shall be deemed equivalent to renewal of the license and
19 special permits, if any, where the department is unable to issue a
20 renewal license or special permit on or before the expiration date.

21 ~~(m)~~

22 (n) If the department issues a single consolidated license
23 pursuant to this section, the department, except as limited by
24 Section 1229 and Article 5 (commencing with Section 1240), may
25 take any action authorized by this chapter, including, but not
26 limited to, action specified in Article 5 (commencing with Section
27 1240 with respect to a primary care clinic, *a mobile health care*
28 *unit*, or special services provided in a clinic that is included in the
29 consolidated license. ~~An action against one or more clinics included~~
30 ~~in the consolidated license shall not be deemed an action against~~
31 ~~the clinic corporation as a whole.~~

32 ~~(n)~~

33 (o) Nothing in this section shall require the business office of a
34 clinic corporation to enroll in the Medi-Cal program, pursuant to
35 subdivision (c) of Section 14043.15 of the Welfare and Institutions
36 Code, or a program specified in Section 1222, as a clinic location
37 subject to the single consolidated license. Each primary care clinic
38 included in the single consolidated license shall be deemed to be
39 licensed for purposes of enrollment as a provider in any health
40 care program. Each primary care clinic, including a mobile health

1 care unit, may separately enroll as a provider in the Medi-Cal
2 program or other health care program using the business address
3 of the primary care clinic.

4 ~~(o)~~

5 (p) Nothing in this section shall affect prospective payment rate
6 calculations made under Section 14132.100 of the Welfare and
7 Institutions Code for individual rural health clinics and federally
8 qualified health centers included in a single consolidated license.

9 ~~(p)~~

10 (q) Nothing in this section shall affect the requirements for
11 obtaining a permit or license from the Board of Pharmacy pursuant
12 to Chapter 9 (commencing with Section 1480) of Division 2 of
13 the Business and Professions Code. Each primary care clinic that
14 is included in the single consolidated license shall be deemed to
15 be licensed as a primary care clinic for purposes of obtaining a
16 pharmacy license or permit.

17 ~~(q)~~

18 (r) Nothing in this section shall affect the requirements for
19 obtaining a clinic laboratory registration or license pursuant to
20 Section 1265 of the Business and Professions Code. Each primary
21 care clinic, including a mobile health care unit, that is included in
22 the single consolidated license shall be deemed to be licensed as
23 a primary care clinic for the purpose of obtaining a clinic laboratory
24 license or registration.

25 ~~(r)~~

26 (s) Nothing in this section shall require a clinic corporation to
27 apply for a single consolidated license.

28 SEC. 3. Section 1213 of the Health and Safety Code is amended
29 to read:

30 1213. A person, firm, association, partnership, corporation, or
31 other legal entity desiring a license for a clinic shall be exempt
32 from the requirements of Chapter 2 (commencing with Section
33 16000) of Division 12.5.

34 SEC. 4. Section 1214 of the Health and Safety Code is amended
35 to read:

36 1214. Each application under this chapter for an initial license,
37 renewal license, license upon change of ownership, or special
38 permit shall be accompanied by a Licensing and Certification
39 Program fee, as follows:

1 (a) For all primary care clinics licensed pursuant to this chapter,
2 the annual fee shall be set in accordance with Section 1266.

3 (b) For all specialty clinics licensed pursuant to this chapter,
4 the annual fee shall be set in accordance with Section 1266.

5 (c) For all rehabilitation clinics, the annual fee shall be set in
6 accordance with Section 1266.

7 (d) For all clinic corporations issued a single consolidated
8 license pursuant to this chapter, the annual fee shall be set in
9 accordance with Section 1266.

10 SEC. 5. Section 1219 of the Health and Safety Code is amended
11 to read:

12 1219. (a) Except for an affiliate clinic, as defined in Section
13 1218.1, ~~or a clinic corporation that includes, in its application for~~
14 ~~a single consolidated license, one or more primary care clinics,~~
15 ~~including one or more mobile health care units, that were primary~~
16 *care clinic or mobile health care unit that was* licensed and in
17 good standing as of December 31, 2009, *and was included in an*
18 *application by a clinic corporation for a single consolidated license*
19 if a clinic or an applicant for a license has not been previously
20 licensed, the department may only issue a provisional license to
21 the clinic as provided in this section.

22 (b) A provisional license to operate a clinic shall terminate six
23 months from the date of issuance.

24 (c) Within 30 days prior to the termination of a provisional
25 license, the department shall give the clinic a full and complete
26 inspection, and, if the clinic meets all applicable requirements for
27 licensure, a regular license shall be issued. If the clinic does not
28 meet the requirements for licensure but has made substantial
29 progress towards meeting those requirements, as determined by
30 the department, the initial provisional license shall be renewed for
31 six months.

32 (d) If the department determines that there has not been
33 substantial progress towards meeting licensure requirements at the
34 time of the first full inspection provided by this section, or, if the
35 department determines upon its inspection made within 30 days
36 of the termination of a renewed provisional license that there is a
37 lack of full compliance with those requirements, no further license
38 shall be issued.

39 (e) If an applicant for a provisional license to operate a clinic
40 has been denied by the department, the applicant may contest the

1 denial by filing a statement of issues, as provided in Section 11504
2 of the Government Code. The proceedings to review the denial
3 shall be conducted pursuant to the provisions of Chapter 5
4 (commencing with Section 11500) of Part 1 of Division 3 of Title
5 2 of the Government Code.

6 SEC. 6. Section 1229 of the Health and Safety Code is amended
7 to read:

8 1229. (a) The state department shall notify, in writing, a clinic
9 of all deficiencies in its compliance with the provisions of this
10 chapter, or the rules and regulations adopted hereunder, that are
11 discovered or confirmed by inspection, and the clinic shall agree
12 with the department on a plan of correction that shall give the clinic
13 a reasonable time to correct the deficiencies. During the allotted
14 time, a list of deficiencies and the plan of correction shall be
15 conspicuously posted in a clinic location accessible to public view.
16 If, at the end of the allotted time provided in the plan of correction,
17 the clinic has failed to correct the deficiencies, the department
18 shall assess the licensee a civil penalty not to exceed fifty dollars
19 (\$50) per day, until the state department finds the clinic in
20 compliance. In that case, the department may also initiate action
21 against the clinic to revoke or suspend the license. Nothing in this
22 chapter shall be deemed to prohibit a clinic that is unable to correct
23 the deficiencies specified in a plan of correction for reasons beyond
24 its control from voluntarily surrendering its license pursuant to
25 Section 1245 prior to the assessment of a civil penalty or the
26 initiation of a revocation or suspension proceeding.

27 (b) Notwithstanding subdivision (a), the department shall notify,
28 in writing, a clinic corporation of all deficiencies in compliance
29 with the provisions of this chapter, or the rules and regulations
30 adopted hereunder, that are discovered or confirmed by inspection,
31 in one or more clinics included in a single consolidated license
32 issued pursuant to Section 1212.5, and the clinic corporation shall
33 agree with the department on a plan of correction that gives the
34 clinic corporation a reasonable time to correct the deficiencies. If,
35 at the end of the time provided in the plan of correction, the clinic
36 corporation has failed to correct the deficiencies, the department
37 shall assess the licensee a civil penalty not to exceed fifty dollars
38 (\$50) per day per clinic cited as deficient, until the department
39 finds the clinic corporation in compliance. The department may
40 also initiate action against the clinic corporation to remove or

suspend the clinic or clinics that are the subject of the deficiencies from the single consolidated license. Nothing in this chapter shall be deemed to prohibit a clinic corporation that is unable, for reasons beyond its control, to correct the deficiencies specified in the plan of correction from voluntarily removing a clinic or clinics from its single consolidated license prior to the assessment of a civil penalty or the initiation of a removal or suspension proceeding. In no case shall the department initiate an action to revoke or suspend the single consolidated license for uncorrected deficiencies outlined in a written notice of deficiencies, in one or more clinics included in a single consolidated license, unless each clinic, including a mobile health care unit, that is included in the single consolidated license is cited in the notice of deficiencies and the clinic corporation failed to correct the deficiencies in every clinic within the allotted time period according to the plan of correction.

SEC. 7. Section 1266 of the Health and Safety Code is amended to read:

1266. (a) The Licensing and Certification Division shall be supported entirely by federal funds and special funds by no earlier than the beginning of the 2009–10 fiscal year unless otherwise specified in statute, or unless funds are specifically appropriated from the General Fund in the annual Budget Act or other enacted legislation. For the 2007–08 fiscal year, General Fund support shall be provided to offset licensing and certification fees in an amount of not less than two million seven hundred eighty-two thousand dollars (\$2,782,000).

(b) The Licensing and Certification Program fees for the 2006–07 fiscal year shall be as follows:

Type of Facility	Fee	
General Acute Care Hospitals	\$ 134.10	per bed
Acute Psychiatric Hospitals	\$ 134.10	per bed
Special Hospitals	\$ 134.10	per bed
Chemical Dependency Recovery Hospitals	\$ 123.52	per bed
Skilled Nursing Facilities	\$ 202.96	per bed
Intermediate Care Facilities	\$ 202.96	per bed
Intermediate Care Facilities - Developmentally Disabled	\$ 592.29	per bed

1	Intermediate Care Facilities - Developmentally		
2	Disabled - Habilitative	\$1,000.00	per facility
3	Intermediate Care Facilities - Developmentally		
4	Disabled - Nursing	\$1,000.00	per facility
5	Home Health Agencies	\$2,700.00	per facility
6	Referral Agencies	\$5,537.71	per facility
7	Adult Day Health Centers	\$4,650.02	per facility
8	Congregate Living Health Facilities	\$ 202.96	per bed
9	Psychology Clinics	\$ 600.00	per facility
10	Primary Clinics - Community and Free	\$ 600.00	per facility
11	Specialty Clinics - Rehab Clinics		
12	(For profit)	\$2,974.43	per facility
13	(Nonprofit)	\$ 500.00	per facility
14	Specialty Clinics - Surgical and Chronic	\$1,500.00	per facility
15	Dialysis Clinics	\$1,500.00	per facility
16	Pediatric Day Health/Respite Care	\$ 142.43	per bed
17	Alternative Birthing Centers	\$2,437.86	per facility
18	Hospice	\$1,000.00	per facility
19	Correctional Treatment Centers	\$ 590.39	per bed
20			

21 (c) Commencing February 1, 2007, and every February 1
 22 thereafter, the department shall publish a list of estimated fees
 23 pursuant to this section. The calculation of estimated fees and the
 24 publication of the report and list of estimated fees shall not be
 25 subject to the rulemaking requirements of Chapter 3.5
 26 (commencing with Section 11340) of Part 1 of Division 3 of Title
 27 2 of the Government Code.

28 (d) Commencing February 1, 2010, and every February
 29 thereafter, the department shall publish the estimated fee for a
 30 single consolidated license issued under Section 1212.5 pursuant
 31 to this section. ~~The calculation of the estimated fee shall be based~~
 32 ~~on a percentage of the fee~~ *estimated fee* for primary care clinics,
 33 for each primary care clinic included in a single consolidated
 34 license, ~~and~~ *license* shall be included in the report and list of
 35 estimated fees required by subdivisions (c) and (e).

36 (e) By February 1 of each year, the department shall prepare
 37 the following reports and shall make those reports, and the list of
 38 estimated fees required to be published pursuant to subdivision
 39 (c), available to the public by submitting them to the Legislature
 40 and posting them on the department's Internet Web site:

1 (1) The department shall prepare a report of all costs for
2 activities of the Licensing and Certification Program. At a
3 minimum, this report shall include a narrative of all baseline
4 adjustments and their calculations, a description of how each
5 category of facility was calculated, descriptions of assumptions
6 used in calculations, and shall recommend Licensing and
7 Certification Program fees in accordance with the following:

8 (A) Projected workload and costs shall be grouped for each fee
9 category.

10 (B) Cost estimates, and the estimated fees, shall be based on
11 the appropriation amounts in the Governor's proposed budget for
12 the next fiscal year, with and without policy adjustments to the fee
13 methodology.

14 (C) The allocation of program, operational, and administrative
15 overhead, and indirect costs to fee categories shall be based on
16 generally accepted cost allocation methods. Significant items of
17 costs shall be directly charged to fee categories if the expenses can
18 be reasonably identified to the fee category that caused them.
19 Indirect and overhead costs shall be allocated to all fee categories
20 using a generally accepted cost allocation method.

21 (D) The amount of federal funds and General Fund moneys to
22 be received in the budget year shall be estimated and allocated to
23 each fee category based upon an appropriate metric.

24 (E) The fee for each category shall be determined by dividing
25 the aggregate state share of all costs for the Licensing and
26 Certification Program by the appropriate metric for the category
27 of licensure. Amounts actually received for new licensure
28 applications, including change of ownership applications, and late
29 payment penalties, pursuant to Section 1266.5, during each fiscal
30 year shall be calculated and 95 percent shall be applied to the
31 appropriate fee categories in determining Licensing and
32 Certification Program fees for the second fiscal year following
33 receipt of those funds. The remaining 5 percent shall be retained
34 in the fund as a reserve until appropriated.

35 (2) (A) The department shall prepare a staffing and systems
36 analysis to ensure efficient and effective utilization of fees
37 collected, proper allocation of departmental resources to licensing
38 and certification activities, survey schedules, complaint
39 investigations, enforcement and appeal activities, data collection
40 and dissemination, surveyor training, and policy development.

1 (B) The analysis under this paragraph shall be made available
2 to interested persons and shall include all of the following:

3 (i) The number of surveyors and administrative support
4 personnel devoted to the licensing and certification of health care
5 facilities.

6 (ii) The percentage of time devoted to licensing and certification
7 activities for the various types of health facilities.

8 (iii) The number of facilities receiving full surveys and the
9 frequency and number of follow up visits.

10 (iv) The number and timeliness of complaint investigations.

11 (v) Data on deficiencies and citations issued, and numbers of
12 citation review conferences and arbitration hearings.

13 (vi) Other applicable activities of the licensing and certification
14 division.

15 (f) (1) The department shall adjust the list of estimated fees
16 published pursuant to subdivision (c) if the annual Budget Act or
17 other enacted legislation includes an appropriation that differs
18 from those proposed in the Governor's proposed budget for that
19 fiscal year.

20 (2) The department shall publish a final fee list, with an
21 explanation of any adjustment, by the issuance of an all facilities
22 letter, by posting the list on the department's Internet Web site,
23 and by including the final fee list as part of the licensing application
24 package, within 14 days of the enactment of the annual Budget
25 Act. The adjustment of fees and the publication of the final fee list
26 shall not be subject to the rulemaking requirements of Chapter 3.5
27 (commencing with Section 11340) of Part 1 of Division 3 of Title
28 2 of the Government Code.

29 (g) (1) No fees shall be assessed or collected pursuant to this
30 section from any state department, authority, bureau, commission,
31 or officer, unless federal financial participation would become
32 available by doing so and an appropriation is included in the annual
33 Budget Act for that department, authority, bureau, commission,
34 or officer for this purpose. No fees shall be assessed or collected
35 pursuant to this section from any clinic that is certified only by the
36 federal government and is exempt from licensure under Section
37 1206, unless federal financial participation would become available
38 by doing so.

1 (2) For the 2006–07 state fiscal year, no fee shall be assessed
2 or collected pursuant to this section from any general acute care
3 hospital owned by a health care district with 100 beds or less.

4 (h) The Licensing and Certification Program may change annual
5 license expiration renewal dates to provide for efficiencies in
6 operational processes or to provide for sufficient cash flow to pay
7 for expenditures. If an annual license expiration date is changed,
8 the renewal fee shall be prorated accordingly. Facilities shall be
9 provided with a 60-day notice of a change in their annual license
10 renewal date.

11 SEC. 8. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.